

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF PARADISE VALLEY

THIS AGREEMENT is entered into April 6 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE TOWN OF PARADISE VALLEY acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project within the boundary of the Town has been selected by the Town and has been submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.
6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.

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NO. 26760  
Filed with the Secretary of State  
Date Filed: 04/06/04  
Janice K. Brewer  
Secretary of State

By: David D. Greenwald

7. The work embraced in this agreement is the reconstruction and realignment of Tatum Boulevard and MacDonald Drive at an estimated cost of:

|  |                               |
|--|-------------------------------|
| Estimated Subtotal Construction Cost includes 15% CE Cost**    | \$ 2,389,900.00               |
| Estimated 5% Contingency                                       | \$ 103,900.00                 |
| <b><i>Estimated Total</i></b>                                  | <b><i>\$ 2,493,800.00</i></b> |
| Estimated Federal-aid funds @ 94.3% of \$1,908,802.00 (capped) | \$ 1,800,000.00               |
| Estimated Town Funds @ 5.7% of \$1,908,802.00 (capped)         | \$ 108,802.00                 |
| Estimated Town Funds @ 100% Balance                            | \$ 584,998.00                 |
| <b><i>Estimated Total Town Funds</i></b>                       | <b><i>\$ 693,800.00</i></b>   |

\*\*Includes 15% of Construction Cost =Construction Engineering Cost

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. Hereby agree to be authorized agent for the Town, and with the aid and consent of the Town and the FHWA, proceed to advertise for, receive and open bids, and subject to the concurrence of the Town and the FHWA, enter into a contract with a firm on behalf of the Town to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.

### **2. The Town will:**

a. If such project is approved for construction by FHWA and the funds are available for construction, the Town will and does hereby designate the State as authorized agent for the Town.

b. Provide any required preliminary engineering and planning studies, the environmental analysis and design of the project. As required by the FHWA, the State will provide design review of the project plans, studies and related documents. And when appropriate provide comments which will be incorporated into the design documents.

c. Prior to the solicitation of bids, deposit funds in the amount determined to be necessary to match federal funds in the ratio required.

d. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement be obligated to incur and will pay for said increased costs.

e. Acquire, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

f. Remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed, prior to the start of construction.

g. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

h. Upon completion of construction, provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, signs, and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

i. Mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

j. By such regulation as it may by ordinance provide, regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the State, the Town and the FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

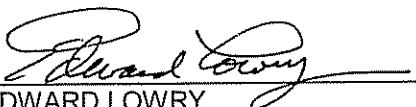
Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

Town of Paradise Valley  
Bob Ciccarelli  
6401 E. Lincoln Dr.  
Paradise Valley, AZ 85253-4399

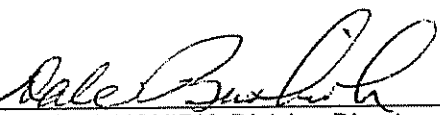
11. In accordance with Arizona Revised Statutes, Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF PARADISE VALLEY**

By   
EDWARD LOWRY  
Mayor

**STATE OF ARIZONA**  
Department of Transportation

By   
DALE BUSKIRK, Division Director  
Transportation Planning Division

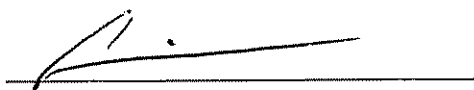
ATTEST:

By   
LENORE LANCASTER  
Town Clerk

APPROVAL OF THE TOWN OF PARADISE VALLEY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and TOWN OF PARADISE VALLEY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 8<sup>th</sup> day of March, 2004.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line, is written over a horizontal line.

City Attorney

1  
2 When recorded, return to:

3  
4 Paradise Valley Town Attorney  
5 6401 East Lincoln Drive  
6 Paradise Valley, Arizona 85253  
7  
8  
9

10 **RESOLUTION NUMBER 1065**

11  
12 **A RESOLUTION OF THE TOWN OF PARADISE**  
13 **VALLEY, ARIZONA, AUTHORIZING AN**  
14 **INTERGOVERNMENTAL AGREEMENT WITH**  
15 **THE STATE OF ARIZONA DEPARTMENT OF**  
16 **TRANSPORTATION FOR THE PURPOSE OF**  
17 **ACQUIRING FEDERAL FUNDING FROM THE**  
18 **FEDERAL HIGHWAY ADMINISTRATION AND**  
19 **DEFINING RESPONSIBILITIES FOR THE**  
20 **CONSTRUCTION OF TATUM BOULEVARD**  
21 **/MCDONALD DRIVE INTERSECTION**  
22 **IMPROVEMENTS**  
23  
24

25 Section 1. WHEREAS, Arizona Revised Statutes, 11-951 et seq., provides that public  
26 agencies, including cities and towns, may enter into intergovernmental agreements for joint  
27 or cooperative action; and

28 WHEREAS, congress has authorized appropriations for, but not limited to, the  
29 construction of streets; and

30 WHEREAS, the construction of Tatum Boulevard and McDonald Drive Intersection  
31 Improvement Project ("Project") is eligible for such funds and has been submitted to the  
32 Federal Highway Administration for approval and acquisition of such funds, and

33 WHEREAS, the Town, in order to obtain federal funds for the construction of the  
34 Project, is willing to provide funds to match federal funds in the ratio required or as fixed  
35 and determined by the Town and the Federal Highway Administration, such funds  
36 administered for the Town's benefit by the State of Arizona, and

1 WHEREAS, the total construction cost of the Project is estimated to be \$2,493,800;  
2 and

3 WHEREAS, by entering into an intergovernmental agreement with, the State of  
4 Arizona, (the "IGA", a copy of which is attached to this Resolution as Exhibit A and  
5 incorporated herein by reference) the State will apply available federal funds for the  
6 construction of the Project at the rate of 94.3% of the cost to construct the Project, up to a  
7 maximum total construction cost of \$1,908,802.00, said federal funding estimated to be  
8 \$1,800,000 based upon the current construction cost estimate; and

9 WHEREAS, The State of Arizona Department of Transportation is authorized to be  
10 the administrator for the Federal Highway Administration and will enter into a Project  
11 Agreement with the Federal Highway Administration covering work on the Project and the  
12 coordination of the federal funds;

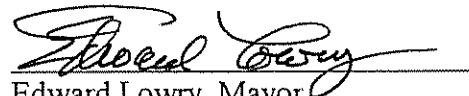
13 WHEREAS, the total amount of Town funds expended to complete the Project is  
14 estimated to be \$693,800.

15 NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of  
16 Paradise Valley, that:


17 1. The Paradise Valley Town Council hereby authorizes the Town Manager to  
18 execute the IGA with the State of Arizona Department of Transportation.

19 2. The Town Manager is authorized to transfer \$693,800 to the State of Arizona  
20 Department of Transportation at the time and pursuant to the requirements stated in the IGA.

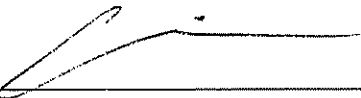
21 PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise  
22 Valley, Arizona, this 26<sup>th</sup> day of February, 2004.

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Edward Lowry, Mayor

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2 ATTEST:

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6 Lenore P. Lancaster, Town Clerk


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8  
9 APPROVED AS TO FORM

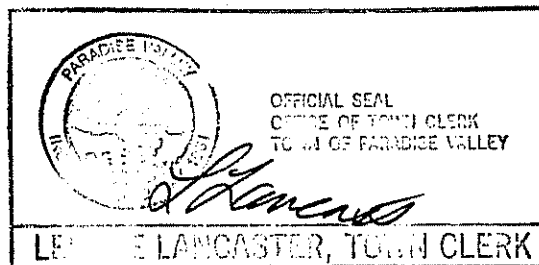
10  
11   
12  
13 Andrew M. Miller, Town Attorney  
14

15 **CERTIFICATION**

16 I, Lenore P. Lancaster, Town Clerk hereby certify that the foregoing is a full, true and  
17 correct copy of Resolution Number 1065 duly and regularly passed and adopted by vote of  
18 the Town Council of Paradise Valley at a meeting thereof duly called and held on the 26<sup>th</sup>  
19 day of February, 2004. That the Resolution appears in the minutes of the meeting, and that  
20 the same has not been rescinded or modified and is now in full force and effect.

21 I further certify that the municipal corporation is duly organized and existing, and has  
22 the power to take the action called for by the foregoing Resolution.  
23  
24  
25

26   
27 Lenore P. Lancaster, Town Clerk







OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0178TRN (**JPA 03-094**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 31, 2004.

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED/mjf  
Attachment  
837288